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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,300	07/13/2001	Edward G. Tiedemann JR.-	QCPA382A1C1	7266

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Qualcomm Incorporated
Patents Department
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EXAMINER	
HYUN, SOON D	

ART UNIT	PAPER NUMBER
2663	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/905,300	TIEDEMANN ET AL.	
	Examiner	Art Unit	
	Soon D Hyun	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 July 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *15-40* is/are allowed.

6)☒ Claim(s) *1-5, 9-12 and 14* is/are rejected.

7)☒ Claim(s) *6-8 and 13* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6,335,922. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 12 of U.S. Patent No. 6,335,922 contains every element of claims 1 and 2 of the instant application and as such anticipates claims 1 and 2 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. *In re Longi*, 759 F.2d at

896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); *In re Berg,* 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

4. Claims 1-5 and 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,335,922 in view of Bishop, Jr. et al (U.S. Patent No. 6,078,577).

Regarding claim 1, the application differs from claim 1 of the Patent in that the Patent determines "a residual forward link capacity available, but the application determines "the forward link capacity available."

Bishop, Jr. et al discloses that determining a forward link capacity available includes determining a residual forward link capacity available (col. 5, line 55-col. 6, line 15).

Those of skill in the art would have been motivated by Bishop, Jr. et al to check a residual forward link capacity when determining "the forward link capacity available" of the application to schedule bandwidth allocation.

Therefore, it would have been obvious to one having ordinary skill in the art that to determine "the forward link capacity available" and "the residual forward link capacity available" to schedule bandwidth allocation.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 9 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bishop, Jr. et al (U.S. Patent No. 6,078,577).

Regarding claim 1, Bishop, Jr. et al discloses a method of a packet data communication system comprising:

determining a forward link capacity available for each cell , i.e., a satellite (20) determines a forward link capacity available (available resources) when the satellite receives data transmission requests(400 in FIG. 4) from a plurality of users (87) in a cell (col. 5, lines 55-65, FIG. 3, step 305 and FIG. 7);

assigning and sending an assigned transmission rate to the one scheduled user, i.e., the satellite assigns a number of time slots (a transmission rate) to the user who is accepted to transmit(one scheduled user) by sending a Request allowed message 500 (FIG. 5), wherein the assigned transmission rate is based on the forward link capacity available for each cell (col. 6, lines 6- 15).

Regarding claims 2 and 9, Bishop, Jr. et al further discloses that the determining steps are repeated every frame with a temporary transmission rate (col. 6, lines 12-15).

Regarding claim 14, refer to the discussion claim 1. Bishop, Jr. et al doe not explicitly disclose a structure of the satellite (20), but the controller means for collecting a status information (Request message 400 in FIG. 4), memory means for storing the status information and timing means for scheduling of data transmission (time slot allocation) are inherently required as recited in the claim to implement the steps of claim 1.

Allowable Subject Matter

7. Claims 15-40 are allowed.

8. Claim 3-8 and 10-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and overcome the double patenting.

9. The following is an examiner's statement of reasons for allowance.

The prior art of record does not teach the active member set as recited in the claim 3.

The prior art of record doe not teach a creating a temporary cell list of affected cells as recited in the claim 10

The prior art of record doe not teach a step of assigning the secondary code channels at each scheduling period and reassigned during the scheduling period as recited in the claims 15 and 28.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 572-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Hyun
3/15/2005

RICKY NGO
PRIMARY EXAMINER

3/18/05